

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JOSEPH KAMELGARD,

Plaintiff,

v.

THE AMERICAN COLLEGE OF
SURGEONS, JOHN DOES “A”, “B”,
AND “C” AS AGENTS OF THE ACS,
and JERZY MACURA,

Defendants.

No. 08 CV 03211

Judge Conlon
Magistrate Judge Denlow

MOTION TO VACATE DISMISSAL

Plaintiff, Joseph Kamelgard, through his attorneys, Miles Zaremski and Myron Mackoff, move this Honorable Court to vacate its dismissal of June 6, 2008. In support of this motion, Plaintiff states as follows:

FACTS

1. The Complaint in this matter was filed electronically on June 3, 2008 according to the instructions on the Northern District of Illinois web site (“web site”).
2. Pursuant to the procedure outlined on the web site, complaints are filed under a “dummy” case number 07 CV 99999 until the time when the Circuit Clerk docket the case and assigns it a permanent case number.
3. A Civil Cover Sheet was filed as an attachment to the Complaint. (A copy of the Civil Cover Sheet is attached hereto as Exhibit A)

4. There is no procedure outlined on the web site that would allow an attorney's appearance to be filed to this "dummy number".

5. Not finding a way to file an appearance concurrent with a complaint, Plaintiff's counsel called the clerk's office and was told to wait until the case was docketed and a case number assigned to the case to file an appearance.

6. The Civil Cover Sheet contained all the necessary contact information with regard to the Plaintiff's attorney.

7. On June 3, 2008, counsel for Plaintiff received an e-mail from the clerk's office that instructed him to "Please e-file an attorney appearance form once the case is docketed on PACER". (A copy of this email is attached hereto and incorporated by reference herein as Exhibit B)

8. On June 5, 2008, counsel for Plaintiff received an e-mail from the clerk's office that instructed him that the case was docketed on PACER. (A copy of this email is attached hereto and incorporated by reference herein as Exhibit C)

9. On June 6, 2008, counsel for Plaintiff e-filed their appearances. (A copy of the PACER docket sheet is attached hereto as Exhibit D)

10. On June 6, 2008, this Court dismissed Plaintiff's complaint for the alleged failure to file an attorney's appearance.

ARGUMENT

11. In filing this matter, Plaintiff's counsel did everything according to the directions of the Circuit Clerk and the Northern District's own web site with respect to filing their appearances including filing appearances within 24 hours of being notified that the case had been docketed on PACER.

12. Plaintiff should not be penalized with the dismissal of his case for following the Clerk's directions with respect to the filing of his counsel's appearances.

13. Filing an appearance on June 6, 2008, three days after the filing of the Complaint and Civil Cover Sheet in this matter, had no dilatory or other negative effect on the progress of this matter since the Clerk's office and the Court was already in possession of all the pertinent information about Plaintiff's counsel on June 3, 2008, Defendants had not been served and no Court dates had been set.

WHEREFORE, for all of the foregoing reasons, Plaintiff Joseph Kamelgard prays the Court vacate its dismissal order of June 6, 2008 and allow this matter to proceed normally.

Respectfully submitted,

____/s/ Myron Mackoff____
Attorney for plaintiff

Myron Mackoff
407 S. Dearborn St., Suite 1310
Chicago, IL 60605
Tel. (312) 922-5236
Atty. Bar No 6225518

Myles Zaremski
Zaremski Law Group
707 Skokie Blvd.
Suite 600
Northbrook, Illinois 60062

CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|-----------------------------|---|
| 1 U.S. Government Plaintiff | 3 Federal Question (U.S. Government Not a Party) |
| 2 U.S. Government Defendant | 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|-----|-----|--|-----|-----|
| Citizen of This State | 1 | 1 | Incorporated <i>or</i> Principal Place of Business In This State | 4 | 4 |
| Citizen of Another State | 2 | 2 | Incorporated <i>and</i> Principal Place of Business In Another State | 5 | 5 |
| Citizen or Subject of a Foreign Country | 3 | 3 | Foreign Nation | 6 | 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	610 Agriculture	422 Appeal 28 USC 158	400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury—	620 Other Food & Drug	423 Withdrawal	410 Antitrust
130 Miller Act	315 Airplane Product Liability	Med. Malpractice	625 Drug Related Seizure of Property 21 USC 881	28 USC 157	430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	365 Personal Injury — Product Liability	630 Liquor Laws		450 Commerce/ICC Rates/etc.
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	368 Asbestos Personal Injury Product Liability	640 R.R. & Truck	PROPERTY RIGHTS	460 Deportation
151 Medicare Act	340 Marine		650 Airline Regs.	820 Copyrights	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (excl. vet.)	345 Marine Product Liability	PERSONAL PROPERTY	660 Occupational Safety/Health	830 Patent	480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	370 Other Fraud	690 Other	840 Trademark	490 Cable/Satellite TV
160 Stockholders' Suits	355 Motor Vehicle Product Liability	371 Truth in Lending			810 Selective Service
190 Other Contract	360 Other Personal Inj.	380 Other Personal Property Damage	LABOR	SOCIAL SECURITY	850 Security/Commodity/Exch.
195 Contract Product Liability		385 Property Damage Product Liability	710 Fair Labor Standards Act	861 HIA (1395ff)	875 Customer Challenge 12 USC 3410
196 Franchise			720 Labor/Mgmt. Relations	862 Black Lung (923)	891 Agricultural Acts
			730 Labor/Mgmt. Reporting & Disclosure Act	863 DIWC/DIWW (405(g))	892 Economic Stabilization Act
			740 Railway Labor Act	864 SSID Title XVI	893 Environmental Matters
			790 Other Labor Litigation	865 RSI (405(g))	894 Energy Allocation Act
			791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	895 Freedom of Information Act
				870 Taxes (U.S. Plaintiff or Defendant)	900 Appeal of Fee
				871 IRS—Third Party 26 USC 7609	Determination Under Equal Access to Justice
					950 Constitutionality of State Statutes
					890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|-----------------------|----------------------------|---------------------------------|--------------------------|---|----------------------------|---|
| 1 Original Proceeding | 2 Removed from State Court | 3 Remanded from Appellate Court | 4 Reinstated or Reopened | 5 Transferred from another district (specify) | 6 Multidistrict Litigation | 7 Appeal to District Judge from Magistrate Judgment |
|-----------------------|----------------------------|---------------------------------|--------------------------|---|----------------------------|---|

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

IX. This case

is not a reffiling of a previously dismissed action.

is a reffiling of case number _____, previously dismissed by Judge _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

From: Intake_ILND@ilnd.uscourts.gov

To: mackoff@aol.com

Subject: Your New E-File Case

Date: Tue, 3 Jun 2008 6:01 pm

Attachments: 08cv3211exh.pdf (162K), 08cv3211civco.pdf (318K), 08cv3211cmp.pdf (123K)

Good afternoon,

Here are your stamped PDFs for for entry#6591 under 07cv99999.

Please e-file an attorney appearance form once the case is docketed on PACER.

Thank you.

From: usdc_ecf_ilnd@ilnd.uscourts.gov
To: ecfmail_ilnd@ilnd.uscourts.gov
Subject: Activity in Case 1:08-cv-03211 Kamelgard v. American College of Surgeons, The et al complaint
Date: Thu, 5 Jun 2008 10:38 am

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

Northern District of Illinois -

Notice of Electronic Filing

The following transaction was entered on 6/5/2008 at 10:37 AM CDT and filed on 6/3/2008

Case Name: Kamelgard v. American College of Surgeons, The et al
Case Number:
Filer: Joseph Kamelgard
Document Number:

Docket Text:

1:08-cv-3211 Notice has been electronically mailed to:
Myron F. Mackoff

1:08-cv-3211 Notice has been electronically mailed to:

Myron F. Mackoff

1:08-cv-3211 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1040059490 [Date=6/5/2008] [FileNumber=4874924-0]
[158101830c5b99df6ac433686d7dc75c0cf768beb7789b70357eac470457b204920
32a02bac4b5e078d638496fd851cfec4319bca43bf931584742db8ed2dc6]]

Document description: Exhibits

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1040059490 [Date=6/5/2008] [FileNumber=4874924-1]
[0671f526a344e5d728feb95b252e013acab8286395288c21384ee5b091de34bbb8a
d4f167cfcf42b83de2146b21b6f28767a49974babcb164df0fe96b177f65c]]

DENLOW, TERMED

United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:08-cv-03211

Kamelgard v. American College of Surgeons, The et al
Assigned to: Honorable Suzanne B. Conlon
Demand: \$75,000
Cause: 28:1332 Diversity–Libel,Assault,Slander

Date Filed: 06/03/2008
Date Terminated: 06/06/2008
Jury Demand: Plaintiff
Nature of Suit: 320 P.I.: Assault Libel
&Slander
Jurisdiction: Diversity

Plaintiff**Joseph Kamelgard**

represented by **Miles J. Zaremski**
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ATTORNEY TO BE NOTICED

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(312) 922-5236
Email: mackoff@aol.com
ATTORNEY TO BE NOTICED

V.

Defendant**American College of Surgeons, The****Defendant****John Doe "A"****Defendant****John Doe "B"****Defendant**

John Doe "C"
as agents of the ACS

Defendant**Jerzy Macura**

Date Filed	#	Docket Text
06/03/2008	<u>1</u>	COMPLAINT filed by Joseph Kamelgard; Jury Demand. Filing fee \$ 350. (Attachments: # <u>1</u> Exhibits)(kj,) (Entered: 06/05/2008)
06/03/2008	<u>2</u>	CIVIL Cover Sheet. (kj,) (Entered: 06/05/2008)

06/06/2008	<u>4</u>	ATTORNEY Appearance for Plaintiff Joseph Kamelgard by Myron F. Mackoff (Mackoff, Myron) (Entered: 06/06/2008)
06/06/2008	<u>5</u>	ATTORNEY Appearance for Plaintiff Joseph Kamelgard by Miles Jay Zaremski (Zaremski, Miles) (Entered: 06/06/2008)
06/06/2008	<u>6</u>	MINUTE entry before the Honorable Suzanne B. Conlon:Civil case terminated. The case is dismissed without prejudice for attorney's failure to file an appearance. Notices mailed by Judicial staff. (wyh,) (Entered: 06/13/2008)
06/06/2008	<u>7</u>	Document Entered In Error. (wyh,) Modified on 6/16/2008 (dl,). (Entered: 06/13/2008)
06/16/2008	<u>8</u>	NOTICE of Correction regarding document number <u>7</u> . (dl,) (Entered: 06/16/2008)